BAIL SLIP

The Appellant/Accused was directed to be released on Bail in and by the order of this Court dated 13.05.2003 made in CRL MP NO. 4773 of 2003 in CRL RC NO. 769 OF 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-01-2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Crl.R.C.No.769 of 2003

N.Thirumoorthi ... Petitioner/Accused 2

-vs-

State by
The Sub Inspector of Police,
Kinathukadavu Police Station,
Pollachi. ... Respondent/Complainant

Criminal Revision is directed against the judgment of conviction and sentence, dated 25.03.2003, made in C.A.No.243 of 2002, on the file of the II Additional Sessions Court, Coimbatore, confirming the conviction and modifying the sentence, dated 17.06.2002, passed by the Judicial Magistrate, Coimbatore in C.C.No.218 of 1997.

For petitioner : Ms.P.V.Rajeswari

For respondent : Mr.Hasan Mohamed Jinnah
Government Advocate (Crl.side)

O R D E R

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This Criminal Revision has been preferred by the revision petitioner / A2, against the Judgment of conviction and sentence, dated 25.03.2003, imposed under Section 326 IPC (2 counts) in C.A.No.243 of 2002 on the file of the II Additional Sessions Judge, Coimbatore, whereby the conviction imposed by the Judicial Magistrate No.II, Coimbatore in C.C.No.218 of 1997 on 17.06.2002 was confirmed, but the sentence alone was modified by reducing the same into 6 months RI and a fine of Rs.1,000/- for each count, instead of one year RI and Rs.1,000/- fine for each count.

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2. The petitioner herein was accused no.2 before the trial court. As per the prosecution case, on 23.09.1995, at about 4 p.m, when Pongiya Gounder, P.W.1 was in his gardenland, at Kothavalayam Village, within the police limit of the respondent, the co-accused was driving his bullock cart in the common pathway. As P.W.1 objected the same, saying that he was destroying the pathway, the first respondent got angry and started wordy quarrel with P.W.1, then the co-accused / A1 attacked P.W.1 and his wife with sickle and caused injuries. The appellant / A2 also attacked P.W.1 and his wife, present there at the scene of occurrence by a crowbar, M.O.1, due to which, P.Ws.1 and 2 sustained fractures, apart from other injuries. The other accused / A3 also attacked P.W.1 and his wife by stick. Based on the complaint, Ex.P.1 given by P.W.1, the case was registered by the respondent police. After the trial, the learned Judicial Magistrate No.II, Coimbatore, convicted the appellant / A2, under Section 326 IPC (2 counts) and he was sentenced to undergo one year RI for each count and also to pay a fine of Rs.1,000/- for each count with default sentence. The co-accused were also convicted under various sections. Aggrieved by which, the revision petitioner herein preferred an appeal in C.A.No.243 of 2002 on the file of the II Additional Sessions Judge, Coimbatore.

3. The learned Additional Sessions Judge, considering the evidence available on record and also the arguments advanced by both the learned counsel, confirmed the conviction under Section 326 IPC (2 counts), but modified the sentence into 6 months RI with Rs.1,000/- fine for each count, instead of 1 year RI and Rs.1,000/- fine, with default sentence for each count and the sentence was ordered to run concurrently. Aggrieved by the judgment of the appellate court, the second accused has preferred this criminal revision.

4. Ms. P.V.Rajeswari, learned counsel appearing for the revision petitioner would contend that the courts below have not considered the evidence properly and convicted the revision petitioner / A2, based on the finding given contrary to the evidence. According to her, Ex.P.1, could not be the first information, as P.W.3 has stated that the son of one Chinnamalai Gounder had given complaint to the police. According to him, the evidence of the alleged eye witnesses P.Ws. 1 to 3 is self contradictory.

5. Per contra, Mr.Hasan Mohamed Jinnah, learned Government Advocate (crl.side) would contend that the occurrence had taken place on 23.091995 at about 4 p.m, as per the FIR, Ex.P.8. It is seen that the written complaint, Ex.P.1 given by P.W.1, Pongiya Gounder was sent to the Judicial Magistrate along with the FIR without any delay, hence, it cannot be construed that the same

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was not given by P.W.1 before the respondent, but by some other person.

6. It is not in dispute that P.W.1 has signed the complaint, Ex.P.1 given before the respondent. Merely because the complaint was written by some other person, it cannot be said that the same was given by the son of Chinnamalai Gounder, as contended by the learned counsel for the revision petitioner. Further, as per the Ex.P.1, P.W.1 has averred that the complaint was read over and explained to him and then, he affixed his signature. As per the complaint, the statement given by P.W.1, about the occurrence was reduced into writing at the Government Hospital, Coimbatore, when he was getting treatment as inpatient. Therefore, I am of the considered view that the arguments advanced by the learned counsel for the revision petitioner that the complaint could have been given by some other person, other than P.W.1, cannot be accepted.

7. It is seen that P.W.5, the doctor who gave treatment on 23.09.1995 to P.W.2, Deivanai has deposed about the injuries sustained by her. P.W.6 is the Radiologist, who took X-Ray for the bone fractures sustained by her on 23.09.1995. According to him, P.W.2 had sustained two bone fractures at her left forearm, for which treatment was given.

8. It is further seen that P.W.2, Deivanai had categorically deposed in her evidence that the revision petitioner / A2 attacked her by a crowbar and due to which, she sustained fracture in her left forearm. According to her, while the appellant and the other accused were attacking her husband, she came out of her house and shouted, due to which, she was also attacked by the revision petitioner / A2 and the other accused.

9. As found by the courts below, the evidence of the injured witnesses, P.W.1 and P.W.2 is corroborated by the eye witness P.W.3 and he has also deposed evidence on the same line of the evidence adduced by P.W.1 and P.W.2, which is supported by medical evidence. P.W.4 is one of the witnesses to the observation mahazar, Ex.P.2. P.W.7 is the Assistant Professor, who gave treatment to P.W.2 for the fracture sustained by her, and she has also been examined with regard to the discharge summary, that was marked as Ex.P.5.

10. Considering the oral and documentary evidence, the trial court convicted the appellant / A2 along with the other accused and the conviction was confirmed by the appellate court, though the sentence was modified.

11. As found by the Hon'ble Apex Court in various decisions in a criminal revision, unless there is manifest error of law or

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perverse finding, leading to miscarriage of justice, this Court cannot interfere with the findings of the court below.

12. On a perusal of the evidence available on record and also considering the arguments advanced by both sides, I am of the considered view that there is no manifest error of law or perverse finding, leading to miscarriage of justice.

13. It is seen that the appellant / A2 and the victims P.W.1 and P.W.2 are close relatives. According to the learned counsel for the revision petitioner, they are living in the same village, without any further dispute or quarrel. Considering the facts and circumstances and the relationship of the parties, I find it reasonable only to modify the sentence, so as to meet the ends of justice.

14. In the result, the conviction under Section 326 IPC (2 counts) is confirmed and the sentence is modified into two months RI for each count and to pay a fine of Rs.5,000/- for each count, which is to be paid as compensation to the victims, P.W.1 and P.W.2. The fine amount shall be deposited by the revision petitioner / A2 before the trial court, within a period of six weeks from the date of receipt of the copy of this order, failing which the revision petitioner / A2 has to undergo the period of sentence, as imposed by the court below. The period already undergone is ordered to be set off.

15. With the above modification, this Criminal Revision is disposed of.

tsvn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The II Additional Sessions Court, Coimbatore.
2. - do - Thro The Principal District Judge, Coimbatore
3. The Judicial Magistrate No.2, Coimbatore
4. - do- Thro The Chief Judicial Magistrate, Coimbatore

5 The Sub Inspector of Police,
Kinathukadavu Police Station,
Pollachi.
6. The Public Prosecutor
High Court of Madras, Chennai.

Akr(co)
nm(21.06.07)

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